

Letter of Findings Number: 09-0627
Sales Tax
For Tax Year 2007

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ISSUES

I. Sales Tax—Optional Warranties.

Authority: IC § 6-8.1-5-1; [45 IAC 2.2-4-1](#); Sales Tax Information Bulletin 2 (December 2006).

Taxpayer protests the imposition of use tax on optional warranties it sold as a retailer.

II. Tax Administration—Negligence Penalty and Interest.

Authority: IC § 6-8.1-10-2.1; IC § 6-8.1-10-1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of a ten percent negligence penalty and interest.

STATEMENT OF FACTS

Taxpayer is an Indiana business in the recreational vehicle ("RV") industry. As the result of an audit, the Indiana Department of Revenue ("Department") issued proposed assessments for sales and use tax, plus ten percent negligence penalties for the tax years 2006 and 2007. Taxpayer protests the imposition of sales tax, penalty and interest for 2007, since it was unaware of the requirement to collect sales tax on optional warranties beginning that year. An administrative hearing was conducted and this Letter of Findings results. Further facts will be supplied as required.

I. Sales Tax—Optional Warranties.

DISCUSSION

Taxpayer protests the imposition of sales tax on optional warranties it sold as a retailer of RVs. Taxpayer states that it now knows that it should have collected the sales tax, but that the Department did not properly inform the RV retail industry generally and Taxpayer specifically that the sales tax should be collected. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

The Department refers to [45 IAC 2.2-4-1](#), which states:

(a) Where ownership of tangible personal property is transferred for a consideration, it will be considered a transaction of a retail merchant constituting selling at retail unless the seller is not acting as a "retail merchant".

(b) All elements of consideration are included in gross retail income subject to tax. Elements of consideration include, but are not limited to:

(1) The price arrived at between purchaser and seller.

(2) Any additional bona fide charges added to or included in such price for preparation, fabrication, alteration, modification, finishing, completion, delivery, or other services performed in respect to or labor charges for work done with respect to such property prior to transfer.

(3) No deduction from gross receipts is permitted for services performed or work done on behalf of the seller prior to transfer of such property at retail.

(Emphasis added).

Also, Sales Tax Information Bulletin 2 (December 2006) states:

Original manufacturer warranties or dealer warranties warranting the condition of a product and providing that maintenance or replacement parts will be provided for either no charge or a flat charge are subject to sales tax.

Taxpayer states that it understands its obligations regarding sales tax and optional warranties now, but that it was not informed of those obligations prior to the audit. Taxpayer also states that it checked with other businesses in its industry and that none of them were aware of the requirements either. The Department notes that all Indiana tax statutes, regulations and Information Bulletins are readily available from many sources, including the Department's web site, and that all taxpayers are required to know and follow Indiana tax laws. It is not feasible for the Department to notify every taxpayer of every update in those laws. Therefore, while the Department understands that Taxpayer was unaware of the requirement to collect, the requirement was still valid. Taxpayer has not met the burden of proving the proposed assessment wrong, as imposed by IC § 6-8.1-5-1(c).

FINDING

Taxpayer's protest is denied.

II. Tax Administration—Negligence Penalty and Interest.

DISCUSSION

The Department issued proposed assessments and ten percent negligence penalties and interest for both tax

years in question. Taxpayer protests the imposition of penalties and interest. The Department is prohibited from waiving interest as provided by IC § 6-8.1-10-1(e). The Department also refers to IC § 6-8.1-10-2.1(a), which states in relevant part:

If a person:

...

(3) incurs, upon examination by the department, a deficiency that is due to negligence;

...

the person is subject to a penalty.

The Department refers to [45 IAC 15-11-2\(b\)](#), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

[45 IAC 15-11-2\(c\)](#) provides in pertinent part:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, Taxpayer incurred a deficiency which the Department determined was due to negligence under [45 IAC 15-11-2\(b\)](#), and so was subject to a penalty under IC § 6-8.1-10-2.1(a). Taxpayer has affirmatively established that its failure to pay the deficiencies was due to reasonable cause and not due to negligence, as required by [45 IAC 15-11-2\(c\)](#). The Department may not waive interest. Therefore, penalties for both years will be waived and interest will remain.

FINDING

Taxpayer's protest is partially sustained and partially denied.

CONCLUSION

Taxpayer's protest is denied regarding Issue I and the imposition of sales tax on the sale of optional warranties. Taxpayer's protest is sustained regarding the imposition of penalties and denied regarding the imposition of interest.

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